

## B. DEPARTMENT JURISDICTION

Several participants in this proceeding question the jurisdiction of the Department to undertake the instant investigation. The following discussion details the authority pursuant to which the Department addresses the issues in this docket.

In conjunction with implementation of the Omnibus Budget Reconciliation Act of 1993, the Federal Communications Commission (FCC) was presented with the need to interpret two newly defined categories of mobile services, commercial mobile radio service (CMRS) and private mobile radio service (PMRS). In so doing, the FCC anticipated that its definitions would satisfactorily encompass all existing mobile services as well as any future mobile services.

Commercial mobile radio service is defined by the FCC as:

A mobile service that is: (1)(A) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (B) an interconnected service; and (C) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (2) the functional equivalent of such a mobile service described in paragraph (1).

### 47 CFR 20.3

In its Second Report and Order of Docket No. 93-252, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, the FCC determined that, by its own definition, existing cellular services are most appropriately categorized as Commercial Mobile Radio Service providers, as are interconnected specialized mobile radio services (SMR) that meet the criteria stated in the CMRS definition. Second Report and Order at ¶188. Further, in that proceeding, the FCC established a presumption that Personal Communications Services (PCS) will be classified as CMRS at such time that entities are authorized to provide the service. Second Report and Order at ¶119.

The Second Report and Order also pronounced the FCC principle of mutual compensation for interstate traffic specifically originating on LEC facilities and specifically terminating on CMRS facilities, which principle is embodied in 47 CFR 20.11(b).<sup>4</sup> This principle of mutual, but limited, compensation is predicated upon an

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<sup>4</sup> 47 CFR 20.11(b) Local exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation.

- (1) A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier.
- (2) A commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.

FCC interpretation that CMRS providers will incur certain costs associated with complying with the requirements for "reasonable interconnection" prescribed by § 201(a) of the Communications Act of 1934 which they are legitimately entitled to recover. Participants in this docket argue that the principle of mutual compensation is not restricted to interstate traffic, but should apply equally to intrastate traffic, and that, consequently, § 201(a) of the Communications Act of 1934 mandates LECs pay mutual compensation for intrastate traffic originating on LEC facilities and terminating on CMRS facilities. OCC Written Exceptions to Interim Draft Decision, pp. 2, 3; Litchfield Written Exceptions to Interim Draft Decision, pp. 7-9; Litchfield Written Exceptions to Second Draft Decision, pp. 2-6; Nextel Written Exceptions to Interim Draft Decision, pp. 8, 9; Nextel Written Exceptions to Second Draft Decision, pp. 3-6; Pagenet Written Exceptions to Interim Draft Decision, p. 2; Bell Atlantic Written Exceptions to Interim Draft Decision, pp. 1-3; Bell Atlantic Written Exceptions to Second Draft Decision, pp. 2-4; MCB Written Exceptions to Interim Draft Decision, p. 2-4; Springwich Written Exceptions to Second Draft Decision, pp. 2-4. After considering the points raised by the participants, the Department is of the opinion that any extension of the FCC mutual compensation principles to the intrastate arena disregards the purposefully limited application envisioned by the FCC in 47 CFR 20.11 and the history surrounding it, as detailed below.

In a series of orders and decisions, the FCC has repeatedly affirmed its position that rates for both physical interconnection and mutual compensation for intrastate services are exclusively subject to state jurisdiction. In its review of the FCC's decisions in this area, the Department has not discerned any recent departure from this established and generally accepted policy, and participants have not cited any in this proceeding. The FCC's underlying philosophy is clear and unaltered through a series of related decisions, beginning with its decision in Indianapolis Telephone Company v. Indiana Bell Telephone, 1 FCC Rcd 228 (1986) (Indianapolis). In Indianapolis, the FCC adjudicated a complaint from Indianapolis Telephone, a cellular services provider, that Indiana Bell refused to provide "reasonable interconnection" in violation of both §§ 201(a) and 202 of the Communications Act, and of the FCC's own previous Cellular Decisions.<sup>5</sup> "Reasonable interconnection," Indianapolis Telephone argued, required that Indiana Bell enter into technical and financial arrangements with cellular carriers equivalent to those employed by Indiana Bell with local independent telephone companies. Those agreements provided for mutual compensation under bill and keep billing arrangements wherein each party retained all of the revenues generated on their networks to compensate for costs of terminating traffic on their networks for which they were not separately compensated.

The FCC concluded that whether the Cellular Decisions do in fact dictate any type of financial arrangement for interconnection in the interstate arena is immaterial

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<sup>5</sup> Cellular Communications Systems, 86 FCC 2d 469 (1981) ("Order"), *recon.*, 89 FCC 2d 58 (1982) ("Reconsideration Order"), *further recon.*, 90 FCC 2d 571 (1982) ("Further Reconsideration Order") are known collectively as the FCC's "Cellular Decisions." The Cellular Decisions generally established a regulatory framework for the licensing and operation of commercial cellular systems, and established requirements for the interconnection of non-wireline cellular carriers.

since the FCC "does not have any jurisdiction over particular aspects of carrier-to-carrier financial arrangements . . . where these arrangements solely relate to intrastate communications." 1 FCC Rcd at 229, 230 ¶ 10. According to the FCC, "compensation arrangements for cellular interconnection were properly left to negotiations between the carriers involved or, in the end, subject to state regulatory jurisdiction." The FCC, therefore, dismissed that portion of Indianapolis Telephone's complaint. Id.

The FCC reiterated its principle of limited application the following year in its Interconnection Order, 2 FCC Rcd 2910 (1987). In that docket, cellular operators argued in favor of mutual compensation for switching charges in the interstate context, and local exchange companies attempted to use the Indianapolis decision to negate those requests. The FCC, in ordering interstate mutual compensation, stated that the local exchange companies' reliance on Indianapolis was misplaced because that decision "applied to financial arrangements relating 'solely to intrastate communications.'" 2 FCC Rcd 2910 at 2915, ¶ 44, citing Indianapolis. The FCC, therefore, still interpreted intrastate mutual compensation as being subject to state jurisdiction.

The principles espoused by, and the policies established in, the FCC Cellular Decisions regarding "reasonable interconnection" are extended through to the Second Report and Order of Docket No. 93-252, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act. The Second Report and Order, which was issued subsequent to passage of the Omnibus Budget Reconciliation Act, explicitly states in Paragraph 232 that its limited principle of interstate mutual compensation is in keeping with its previous decisions, and further specifically references in a footnote the Interconnection Order. The Interconnection Order in turn cites Indianapolis as the basis for its conclusions. The FCC, therefore, did not alter previously existing policies in this area in response to the Omnibus Budget Reconciliation Act of 1993. In light of the foregoing, the Department concludes that it has the authority to conduct this proceeding and adjudicate issues of mutual compensation for intrastate telecommunications services.

It is also worth noting that if the FCC were to have interpreted its responsibilities in this area differently and suggested broader application of its policy of mutual compensation to both interstate and intrastate traffic, such a policy would certainly be of joint Federal-State concern, as it would clearly affect the costs of local exchange companies and state policies regarding those companies. Pursuant to established protocols outlined in 47 U.S.C. 410(c), it is reasonable to assume that the FCC would refer such common carrier communications matters that are of joint Federal-State concern to a Federal-State Joint Board. The absence to date of any initiated Joint Board on this particular subject lends further credence to the Department's conclusion that the FCC's announced mutual compensation principle applies only in the interstate context.

After reviewing the procedural practices of the FCC and of this Department, it is reasonable to conclude that sufficient statutory authority exists, and will continue to exist, to permit this Department to investigate upon its own initiative any proposal by

SNET to compensate any other telecommunications network provider for access to or use of that provider's infrastructure. Such proposed financial agreements may ultimately impact upon basic service costs and are accordingly, a matter of interest to this Department and the Connecticut public.

### **C. WIRELESS MUTUAL COMPENSATION**

#### **1. Scope of the Inquiry**

Public Act 94-83 does not mandate specific Department action with respect to mutual compensation. The Department, therefore, must be guided in its effort by the general statutory mandates to foster competition and protect the public interest. In the Department's view, this proceeding represents the first opportunity for the Department to begin to clearly define the future scope of its own participation in a market where the interactions of the participants must be increasingly shaped by the many forces of competition and not the many faces of regulation. Therefore, the Department has approached the issues in this proceeding with relative caution and conservatism, seeking to ensure that its positions and policies in this matter are consistent with its previously stated commitments to foster full and fair competition.

This proceeding was initiated to review a proposed mutual compensation plan developed by SNET and proposed for use with a select category of wireless services providers. By initiating this proceeding, the Department is not attempting to expand its authority over companies currently licensed by the FCC to provide wireless communications services. Rather, the Department initiated this docket in recognition of its authority over SNET as a local exchange carrier.

The Department, therefore, does not view this proceeding as an infringement on the authority of any other regulatory agency, as an extension of this agency's powers to regulate wireless communications services or as an impediment to implementation of Public Act 94-83. To the contrary, the Department considers this proceeding a relatively conservative effort to ensure any financial obligation incurred by SNET to achieve the goal of an "advanced telecommunications infrastructure" as required by Section 16-247a(4) and Departmental mandate in Docket 94-07-01 is both prudent and proper. This is consistent with the Department's past history and represents no new interpretation by it of either its statutory responsibilities or its jurisdictional authority.

#### **2. Context of the Inquiry**

Throughout the proceedings to implement Public Act 94-83, the Department has been driven by the legislative mandate to foster competition while protecting the public interest. To that end, the Department has streamlined the procedures for obtaining a certificate of public convenience and necessity to offer telecommunications service in Connecticut and has implemented the legislative desire that the local service markets of Connecticut be open to competition. At the same time, the Department has established requirements necessary in a multi-provider local service market to protect the interests of the Connecticut public.

Among the requirements imposed on certified local exchange carriers are the following: a CLEC must offer nondiscriminatory interconnection to its network as detailed in the Department's Decision in Docket No. 94-07-01, dated November 1, 1994; a CLEC must comply with the operational and technical requirements established by the Department's Decision in Docket No. 94-10-02, dated September 22, 1995; a CLEC must serve any and all customers seeking service in its authorized area(s) of service, as required by the Department's Decision in Docket No. 94-07-03, dated March 15, 1995; and a CLEC must offer a basic telecommunications services option as defined by the Department in its Decision in Docket No. 94-07-07, dated February 28, 1995.

Additionally, statutes and regulations subject CLECs to the Department's regulation through the following requirements: CLECs must provide a current listing of rates and charges for all authorized services; CLECs must satisfy certain filing requirements such as annual reports on its Connecticut operations, copies of the CLEC's Form 10-K and other informational filings; and CLECs are required to make prompt and reasonable investigations of each customer complaint and provide with each customer's bill a toll-free telephone number and address of the CLEC to which complaints may be addressed.

As the certifying authority, the Department has jurisdiction to ensure that CLECs comply with the above-detailed requirements, just as the Department has comparable authority over the LECs. In recognition of the responsibilities and obligations imposed on CLECs and LECs by the Department, in Docket No. 94-10-02, the Department requires CLECs and SNET to provide mutual compensation pursuant to the methodology set forth in the Decision.

The Department lacks the authority to impose the same local service responsibilities and obligations on wireless carriers providing services in Connecticut. Such authority, with the narrow exception that allows the Department to impose universal service, Lifeline, and TRS funding responsibilities on wireless carriers (see Decision, Docket No. 94-07-08, dated March 31, 1995, and Decision, Docket No. 94-07-09, dated May 3, 1995), belongs to the FCC. Without the corresponding ability to impose local service obligations and responsibilities on wireless carriers, the Department will not authorize SNET to enter into mutual compensation agreements with such carriers. Wireless carriers, therefore, are limited to the mutual compensation provided for by federal law and the rules and regulations of the FCC, i.e. compensation for interstate traffic.

A wireless carrier may, however, seek certification as a CLEC in Connecticut. By obtaining a certificate of public convenience and necessity, a wireless carrier would simultaneously be subject to the responsibilities and obligations imposed on all CLECs in Connecticut and eligible for mutual compensation as detailed in the Department's Decision in Docket No. 94-10-02, dated September 22, 1995.

## V. CONCLUSION

The Department lacks the authority to impose the same local service responsibilities and obligations on wireless carriers as it has imposed on CLECs and LECs. Such jurisdiction, with the narrow exception that allows the Department to impose universal service, Lifeline, and TRS funding responsibilities on wireless carriers, belongs to the FCC. In the absence of authority to impose local service obligations and responsibilities on wireless carriers, the Department will not authorize mutual compensation between SNET and such carriers. Unless and until a wireless carrier seeks certification in Connecticut as a CLEC, such wireless carrier is limited to the mutual compensation provided for by federal law and the rules and regulations of the FCC, i.e. compensation for interstate traffic.

## VI. FINDINGS

1. The Department has the authority to adjudicate issues of mutual compensation for intrastate telecommunications services.
2. Pursuant to its authority over CLECs and LECs, in previous Decisions the Department has imposed local service responsibilities and obligations on CLECs and LECs and has required mutual compensation between SNET and CLECs.
3. Jurisdiction over wireless carriers, with the narrow exception that allows the Department to impose universal service, Lifeline and TRS funding responsibilities on wireless carriers, belongs to the FCC.
4. In the absence of authority to impose local service obligations and responsibilities on wireless carriers, the Department will not extend the benefit of mutual compensation to such carriers.
5. Wireless carriers are limited to the mutual compensation provided for by federal law and the rules and regulations of the FCC, i.e. compensation for interstate traffic.
6. A wireless carrier would be eligible for mutual compensation for intrastate traffic if such wireless carrier became certified as a CLEC in Connecticut.

DOCKET NO. 95-04-04 DPUC INVESTIGATION INTO WIRELESS MUTUAL  
COMPENSATION PLANS

This Decision is adopted by the following Commissioners:

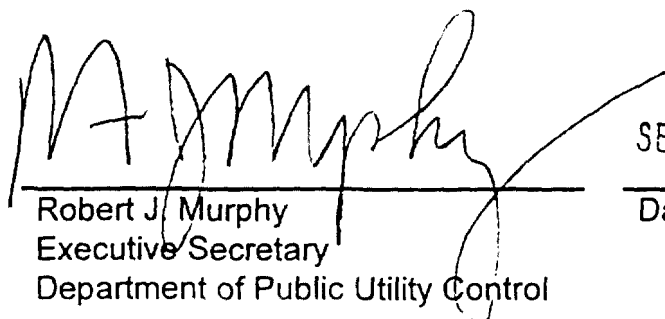
Thomas M. Benedict

Reginald J. Smith

Jack R. Goldberg

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

  
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Robert J. Murphy  
Executive Secretary  
Department of Public Utility Control

SEP 25 1995  
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Date